



Gary A. Van Cleve

Of Counsel

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Gary A. Van Cleve is a seasoned trial attorney and an appellate advocate handling a full range of real estate-related litigation. Gary focuses on representing property owners in: (1) condemnation actions where either the government or a utility company takes private property for a public use through its power of eminent domain, (2) land use disputes with local governments typically involving zoning or permitting issues, and (3) property tax appeals. Gary is the chair of Larkin Hoffman's real estate litigation practice group.

Representative Experience

- **Regulatory Taking.** Successfully secured approval for a golf course redevelopment into residential housing after the city denied a redevelopment plan and prevented a sale due to local residents' objections. We filed a petition for writ of mandamus and complaint for declaratory and injunctive relief, arguing that the denials constituted a regulatory taking under the Penn Central test. We alleged that the value of the property taken was \$25 million based on a pending purchase agreement. The city answered, and immediate settlement negotiations ensued, which resulted in the City Council voting to approve the client's plan with some minor changes and granting all of the entitlement requests.
- **Land Use Permit via Special Exception Permit.** Secured permission for a Wisconsin dry agricultural fertilizer business to be developed in a rural area after a land use permit application had been tabled by the county zoning committee to allow for the airing of issues raised by neighboring property owners. I submitted a detailed land-use analysis to the zoning committee and appeared at the hearing to argue in support of granting the special exception permit. Citing Wisconsin's relatively new Act 67 law that sets uniform standards that local governments must follow in deciding land use applications, requiring "substantial evidence" to support a local decision on a conditional use or special exception permit, the committee voted unanimously to grant the permit. The zoning committee granted the permit on the basis that the Act 67 standard had been met by the applicant and substantial evidence supported granting the permit. The opponents did not appeal the outcome and the clients are proceeding to build the plant in preparation for next year's planting season.
- **Constitutional Challenge in Minnesota Mining Matter.** Representation of property owners on constitutional challenge to county ordinance that banned industrial sand mining for out-of-state uses, but allowed the same type of mining for local, construction uses. Challenge based upon due process, equal protection and dormant Commerce Clause violations.
- **Compensation for Property Taken.** Obtained a \$650,000 jury award in March 2016 for a

Services

- Mining
- Real Estate Litigation
- Appellate Advice & Advocacy
- Administrative and Regulatory Law
- Construction and Surety
- Construction Litigation
- Eminent Domain and Inverse Condemnation
- Environmental Regulations
- Litigation
- Real Estate
- Property Tax Appeals

Rochester property owner and developer whose access to a highway frontage road was taken by the Minnesota Department of Transportation (MnDOT).

- Inverse Condemnation Claims. Won summary judgment in two separate inverse condemnation actions where the court held that the loss of the client's highway access was a compensable taking of a property right and ordered MnDOT to commence condemnation proceedings to determine the just compensation that must be paid to the client for the loss of access.
- Assignment of Maintenance Responsibility. Won summary judgment for a property owner who was fighting to have his township accept maintenance responsibility for a new road built by MnDOT to replace a direct highway access for his business that was taken by MnDOT for highway improvements.
- Property Tax Appeal – Fortune 500 Company. Successfully negotiated a property tax appeal settlement for a portion of the Twin Cities-based corporate headquarters of a Fortune 500 company that resulted in more than \$800,000 in property tax savings to the client.
- Property Tax Counsel to Fortune 100 Company. Representing Twin Cities-based Fortune 100 company on property tax issues and appeals for more than 20 properties, including corporate headquarters.
- Government Permitting. Ongoing representation of industrial sand mining client in litigation in Wisconsin on local government permitting issues.
- Property Tax Recapture. Successfully reduced open space property owner's \$3 million property tax recapture liability by a million dollars.
- Transportation Fee Invalidated. In a case decided by the Minnesota Supreme Court, obtained ruling that \$1.6 million transportation improvement fee that city attempted to levy on developer was illegal and without statutory authority.

Education

- University of Iowa College of Law (J.D., with distinction)
- University of Wisconsin (B.A., With Honors)

Bar/Court Admissions

- Wisconsin, 1990
- Minnesota, 1984
- Iowa, 1980
- United States District Court, District of Minnesota
- U.S. Court of Appeals, 8th Circuit
- U.S. District Court, Western District of Wisconsin
- U.S. Court of Appeals, 7th Circuit
- U.S. District Court, Northern District of Iowa
- U.S. District Court, District of North Dakota

Professional Affiliations

- Larkin Hoffman, Chair, Real Estate Litigation Department
- Larkin Hoffman, Board of Directors, 2002-2008
- Medtronic Twin Cities in Motion Community Partners, College Scholarship and Medtronic Global Heroes Selection Committee
- Larkin Hoffman MS 150 Team Captain for Team Larkin Hoffman, 2007-2013
 - 2008 recipient of "Most Improved Team" award; 2008 recipient of inaugural Bike MS

Cup; seven-time rider in MS 150 charity bike ride

- St. Andrews Run for Others, Planning Committee(fundraising run for Habitat for Humanity)

Recognition

- AV® Preeminent Rating, by Martindale-Hubbell, 1997-present
- Best Lawyers in America®, Eminent Domain and Condemnation Law, 2016-present
- Super Lawyer, Super Lawyers magazine, 2005-present
- Top 40 Real Estate Lawyer, Super Lawyers magazine
- Top Lawyers in Minnesota,® Minnesota Monthly, 2022 - present
- Minnesota State Bar Association, Board Certified Civil Trial Specialist and Board Certified Real Property Specialist for over 20 years [not currently certified]
- Board Certified Civil Trial Advocate, by National Board of Trial Advocacy
- Board Certified Civil Pretrial Advocate, by National Board of Trial Advocacy; 1998-present[Note: the civil pretrial certification is not accredited by the Minnesota Board of Legal Certification]

Prior Professional Experience

- Former Adjunct Professor, Land Use Law, University of St. Thomas Law School
- Former Special Assistant Attorney General, State of Minnesota
- Former Law Clerk, Senior U.S. District Judge William C. Hanson, Northern and Southern Districts of Iowa